

Article 9: Trust Fund Requirements for Lawyers.

(Trust Fund Requirements for Lawyers and Appendix amended and readopted September 19, 2001. Renumbered and codified as §§ 3-901 to 3-907 effective July 18, 2008.)

(Appendix 1 amended March 29, 2006; Appendix 1 amended November 15, 2007; Appendix 1 deleted March 19, 2014.)

§ 3-901. Definitions.

(A) The following definitions shall apply to the Trust Accounts and Blanket Bonds Rules:

(1) "Financial Institution" includes any state or federally chartered bank, savings bank, savings and loan association, or building and loan association insured by the Federal Deposit Insurance Corporation or any federal credit union that participates in the National Credit Union Administration Share Insurance fund.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(3) "Notice of dishonor" refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

§ 3-901(A)(1) amended December 16, 2015.

§ 3-902. General provisions.

All lawyers admitted to practice on active status (defined as Regular Active, Junior Active, Senior Active, or Military Active) with an office in the State of Nebraska shall have and maintain a trust account in a financial institution for the deposit of funds of clients unless such lawyer is a member of the Nebraska judiciary, or does not reasonably expect that he or she will receive into his or her hands funds of clients. Lawyer trust accounts shall be maintained only in financial institutions approved by the Counsel for Discipline of the Nebraska Supreme Court as set forth in § 3-904.

Rule 2 amended November 15, 2007. Renumbered and codified as § 3-902, effective July 18, 2008.

§ 3-903. Interest-bearing trust accounts.

(A) Except as may be authorized hereinafter, interest earned on insured trust accounts (less any deduction for service charges, fees of the financial institution, and intangible taxes collected with respect to the deposited funds) shall belong to the clients whose funds have been so deposited, and the lawyer or law firm shall have no right or claim to such interest.

(B) Unless an election not to do so is submitted in accordance with the procedure set forth in § 3-903(C), a lawyer or law firm shall maintain an interest-bearing insured trust account for clients' funds which are nominal in amount or are expected to be held for a short time in compliance with the following provisions:

(1) No earnings from such an account shall be made available to a lawyer or law firm.

(2) The account shall include only clients' funds which are nominal in amount or to be held for a short period of time.

(3) Funds in each interest-bearing account shall be subject to withdrawal upon demand, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(4) The rate of interest payable on any interest-bearing trust account shall be the same rate of interest paid by the financial institution for all other holders of similar accounts. Interest rates higher than those offered by the financial institution on regular or savings accounts may be obtained by a lawyer or a law firm on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(5) Lawyers or law firms electing to deposit client funds in an interest-bearing trust account shall direct the financial institution:

(a) To remit interest or dividends, as the case may be, at least quarterly to the Nebraska Lawyers Trust Account Foundation (hereinafter Foundation); and

(b) To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm, the trust account number, and the interest rate for whom the remittance is sent; and

(c) To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation.

(6) The interest or dividends received by the Foundation shall be used by the Foundation solely for the support of the Legal Aid of Nebraska program. Such income shall be applied only to activities permitted to be conducted by organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as from time to time amended.

(7) This rule may be subsequently amended to effectuate its purposes or to comply with any amendments to the Internal Revenue Code or new interpretations by the Internal Revenue Service or the courts.

(C). A lawyer or law firm that elects to decline to maintain accounts described in § 3-903(B)(5) shall submit a Notice of Declination in writing to the Chief Justice of the Supreme Court or his or her designee by February 15 of the year to which the Notice of Declination will apply.

(1) Notwithstanding the foregoing, any lawyer or law firm may petition the Court at any time and, for good cause shown, may be granted leave to file a Notice of Declination at a time other than those specified above. An election to decline participation may be revoked at any time by filing a request for enrollment in the program.

(2) A lawyer or law firm that does not file with the Chief Justice of the Supreme Court a Notice of Declination in accordance with the provisions of this rule shall be required to maintain an account in accordance with § 3-903(B)(5).

(3) The Board of Directors of the Nebraska Lawyers Trust Account Foundation may take all action necessary at any time to exempt a lawyer, law firm, or trust account otherwise participating in the program where in the Board's judgment such participation would be administratively or economically unreasonable, burdensome, or counterproductive to the purposes of the program.

Rule 3(B)(5)(b) and (6) amended November 15, 2007. Renumbered and codified as § 3-903, effective July 18, 2008.

§ 3-904. Trust account overdraft notification rules.

(A) The trust account overdraft notification rules shall become effective on July 1, 2002.

(B) A financial institution shall be approved as a depository for lawyer trust accounts if it shall file with the Counsel for Discipline of the Nebraska Supreme Court an agreement, in a form provided by the Counsel for Discipline, to report to the Counsel for Discipline, in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Counsel for Discipline shall establish rules governing approval and termination of approved status for financial institutions and shall annually publish a list of approved financial institutions.

(C) No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30 days' notice in writing to the Counsel for Discipline.

(D) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor. The financial institution shall provide a copy or machine readable copy of the dishonored instrument, if the instrument is available to the financial institution, to the Counsel for Discipline within 5 banking days of receiving a written request for a copy of the instrument from the Counsel for Discipline; and

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(E) Such reports shall be delivered by mail, electronically, or otherwise to the Office of the Counsel for Discipline of the Nebraska Supreme Court within 5 banking days of the date on which an instrument is dishonored. If an instrument presented against insufficient funds is honored, then the report shall be delivered by mail, electronically, or otherwise to the Office of the Counsel for Discipline of the Nebraska Supreme Court within 5 banking days of the date of presentation for payment against insufficient funds.

(F) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(G) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

§ 3-905. Trust account certification rules.

(A) A lawyer who is associated with a law firm, which for purposes of this rule shall include firms that operate as a limited liability professional organization, a partnership, a professional service corporation, or a nonprofit legal services organization, shall be considered to have and maintain a trust account if his or her law firm maintains a trust account as specified in § 3-902.

(B) A nonresident lawyer who is admitted to practice before the courts of this State on a case-by-case basis shall be exempt from the requirements of these rules.

(C) Each lawyer admitted to practice on active status (defined as Regular Active, Junior Active, Senior Active, and Military Active) with an office in the State of Nebraska shall submit to the Court a certification through the Court's on-line system reflecting the existence of the trust account required under § 3-902 or, in the alternative, that he or she does not now have and does not reasonably expect to have funds of clients come into his or her hands within the next 12 months in the State of Nebraska. Such certification shall be submitted through the Court's on-line system on an annual basis at the time of annual license renewal. Members of the Nebraska judiciary need not complete the certification. Those lawyers maintaining trust accounts shall also provide on their certification the name and address of the financial institution where the account is maintained, the account number, and the name and address of all persons authorized to sign checks or make withdrawals on the account. If an existing trust account is closed or a new account opened, an updated certification shall be submitted

in the manner directed by the court by any such attorney within 30 days providing the reason for closing of an account, as well as the specified information on any new account.

(D) Any lawyer who certified that he or she does not reasonably expect to have funds of clients come into his or her hands within the next 12 months within the State of Nebraska but who does receive clients' funds shall forthwith establish a trust account for the deposit and maintenance of such funds.

Rule 5(C) amended March 29, 2006; Rule 5(A) and (C) amended November 15, 2007. Renumbered and codified as § 3-905, effective July 18, 2008. § 3-905(A) and (C) amended March 19, 2014; § 3-905(E) amended December 3, 2013, effective April 1, 2014; § 3-905(C) and (D) amended and (E) deleted December 14, 2016.

§ 3-906. Trust account audit rule.

The Counsel for Discipline of the Nebraska Supreme Court, or such counsel's representative authorized in writing, shall have access to the affidavits required in § 3-905 and shall have the power to audit at any time any trust account required by these rules.

§ 3-907. Purpose of rules.

(A) These rules shall not affect the Client Assistance Fund, its rules, procedures, structure, or operation in any way; nor shall the adoption of these rules make the Nebraska State Bar Association, its officers, directors, representatives, or membership liable in any way to any person who has suffered loss by theft, misappropriation, or fraud by a lawyer. These rules are adopted solely for the purposes stated herein and not for the purpose of making the Nebraska State Bar Association, its officers, directors, representatives, or membership insurers or guarantors for clients with respect to funds of clients which come into the hands of their lawyers.

(B) These rules do not create a claim against a financial institution or its officers, directors, employees, and agents for failure to provide a trust account overdraft report or for compliance with any provision of these rules.
